

claimant's request for worker's compensation benefits. The ALJ concluded that claimant was "using the Workers Compensation Act as a vehicle in which to secure and fill prescriptions of narcotic medications." The ALJ went on to point out that claimant could not recall most of her emergency room and doctor visits in January and February of 1999. But claimant alleged that some of those visits for medical treatment and narcotic medications in January and February of 1999 were not made by her but were made instead by her sister.

On appeal, claimant contends she proved she suffered permanent injuries to her upper extremities, right shoulder, right hip and low back with pain radiating down the right leg. As a result of those permanent injuries, claimant contends she is entitled to a permanent partial general disability based on either a whole body functional impairment rating of 22 percent or, in the alternative, a 19 percent permanent partial general disability based on a work disability.

Conversely, respondent requests the Board to affirm the ALJ's Award that denied claimant benefits. Respondent contends claimant's credibility is very much in question in this case as claimant's testimony was inconsistent in the description of the accident, in the description of her injuries, and in failing to give both her treating physician and her evaluating physician a history of preexisting symptoms. Because of that inconsistent testimony, respondent argues claimant is not believable. Thus, respondent argues claimant failed to prove by a preponderance of the credible evidence that her accidental injuries arose out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and the parties' arguments, the Board makes the following findings and conclusions:

The Board finds the Award that denied claimant workers compensation benefits should be affirmed. In proceedings under the workers compensation act, the claimant has the burden to prove by a preponderance of the credible evidence his or her entitlement to an award of compensation and prove the various conditions on which that right depends.¹

Here, claimant alleges in a fall at work she suffered permanent injuries to her upper extremities, right shoulder, right hip and lumbosacral spine with pain radiating down her right leg. She further alleges that those permanent injuries caused her to suffer a permanent whole body functional impairment and permanent work restrictions were imposed resulting in claimant suffering both a wage loss and a work task loss.

¹ See K.S.A. 1998 Supp. 44-501(a) and K.S.A. 1998 Supp. 44-508(g).

But claimant was confronted with medical treatment records from three separate hospital emergency rooms that she visited on ten separate occasions in the month of January after her alleged January 1, 1999, accident, which noted she had complaints of pain and discomfort in her left leg, left side of the face, back and ribs. Claimant also complained of dental pain, headaches and nausea. Those records, however, failed to indicate that claimant expressed any complaints of symptoms in either her upper extremities or right shoulder. And her back pain complaint was only briefly mentioned in one emergency room visit. During those emergency room visits, claimant also made repeated requests for narcotic medications. In fact, on at least one occasion, she visited one hospital emergency room and made a request for pain medication, and then when she was refused the medication, she went to another hospital emergency room only ten minutes later and made another request for pain medication.

The Board also finds significant that claimant provided histories to her treating physician Dr. Robert L. Eyster and to Dr. Pedro Murati, the physician who claimant's attorney sent her for examination and evaluation, that she had no previous symptoms in her upper extremities, shoulders, low back or right hip. But only a few days before her alleged January 1, 1999, fall, claimant was seen at Hertzler Clinic in Halstead, Kansas, on December 22, 1998, and filled out a questionnaire indicating she had experienced pain in her hands and joints and was presently having joint pain, stiffness and swelling. Also, on December 28, 1998, again at the Hertzler Clinic, claimant had a DEXA scan that showed claimant had severe osteopenia in the lumbar spine and mild osteopenia in her right hip.

Dr. Eyster first examined claimant on June 3, 1999, and as a result of the history that claimant provided him, his first impression was that she had bilateral carpal tunnel syndrome and attributed those injuries to her January 1, 1999, fall at work. But after he was given history that claimant had symptoms in her hands only a few days before the fall, he questioned the etiology of claimant's hand symptoms. He went on to opine that the cause of those symptoms was just as likely or more likely a preexisting condition than the result of the January 1, 1999, accident.

The ALJ had the opportunity to personally observe the claimant testify before him, on three separate occasions, two preliminary hearings and the regular hearing. Thus, he had the opportunity to personally assess claimant's credibility. The ALJ in denying claimant benefits had to find that claimant's testimony was not truthful.

After reviewing claimant's testimony, the Board also questions her truthfulness. The Board finds that in order to award claimant workers compensation benefits her testimony had to be believable. In this case, claimant's severe inconsistencies render her testimony unbelievable. Thus, the Board concludes claimant failed to prove by a preponderance of the **credible** evidence that she suffered accidental injuries that arose out of and in the course of her employment.

The Board further agrees with the findings of fact and conclusions of law that are set out in the Award. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts those findings and conclusions as its own as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ John D. Clark's May 7, 2001, Award should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Terry J. Torline, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Workers Compensation